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CHARLES ELMORE GROPLEY
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NO. 199

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

J. W. HALE, Petitioner

v.

THE UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT,

AND

BRIEF IN SUPPORT THEREOF.

J. S. PICKETT,
THOMAS P. FITZGERALD,
Of Counsel.

LEONARD L. LOCKARD,
Attorney for Petitioner.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

J. W. Hale, defendant in the United States District Court for the Western District of Louisiana, and appellant in the United States Circuit Court of Appeals for the Fifth Circuit, files this his petition and prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit affirming the judgment of conviction of petitioner by the United States

District Court for the Western District of Louisiana, for violations of Section 3253 of the Internal Revenue Code.

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 413) has not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 11, 1945, (R. 419) and a petition for rehearing (R. 420) was denied on June 7, 1945, (R. 424).

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 11 and 13 of the Rules of Criminal Procedure promulgated by this Court May 7, 1934.

STATEMENT OF THE CASE

J. W. Hale, petitioner herein, was indicted by the Grand Jury for the Western District of Louisiana, on October 3, 1944. The indictment contained four counts charging petitioner with possessing untaxed whiskey and with carrying on the business of a retail liquor dealer without paying the special tax as required by law. (R. 1-4).

Counts Two and Three of the indictment charged that on or about June 2 and August 8, 1944, respec-

tively, petitioner had carried on the business of a retail dealer in Sabine Parish, Louisiana, without the payment of the required special tax. (R. 2-3). Neither alleged any additional facts descriptive of the offense charged, its time, place, or other circumstances.

Before trial, petitioner filed a motion to quash the indictment on the grounds that each count thereof was uncertain and indefinite and did not set forth sufficient facts to require petitioner to answer or enable him to properly plead thereto. The motion to quash was overruled by the Court and petitioner reserved a bill of exception. (R. 6).

On the trial of the case over petitioner's timely objection, the Government was permitted to introduce evidence to show an offense on or about July 8, 1944, in connection with Count Three of the indictment, charging an offense on or about August 8, 1944. (R. 73-74).

On October 28, 1944, a verdict was returned finding petitioner guilty on Counts Two and Three of the indictment. (R. 370, 391)

Petitioner was sentenced to serve eighteen months in the penitentiary on Count Two of the indictment. Imposition of sentence on Count Three was suspended and petitioner was placed on probation for a period of five years. (R. 372-373, 391)

On appeal to the Circuit Court of Appeals for the Fifth Circuit the judgment of the trial Court was affirmed on May 11, 1945 (R. 419), and a rehearing was denied on June 7, 1945 (R. 425).

QUESTIONS PRESENTED

1. Whether the counts of the indictment under which petitioner was convicted were sufficient under the requirements of Amendments V and VI of the Constitution of the United States.

2. Whether the question of sufficiency of the indictment was properly raised by the motion to quash filed by petitioner.

3. Whether there was material variance and error in admitting over petitioner's timely objection evidence to show an offense on or about July 8, 1944, in connection with Count Three of the indictment charging an offense on or about August 8, 1944.

REASONS FOR THE WRIT

That the decision of the Circuit Court of Appeals sustaining the action of the trial court in overruling petitioner's motion to quash the indictment returned against him is in conflict with the decision of this Court in the case of *Ledbetter v. United States*, 170 U. S. 606, 42 L. ED. 1162, and with decisions of the Circuit Court of Appeals for the Eighth Circuit in the following cases:

Partson v. United States, 20 F. (2d) 127
Turk v. United States, 20 F. (2d) 129
Jarl v. United States, 19 F. (2d) 891
Lynch v. United States, 10 F. (2d) 947

That petitioner's trial and conviction, under the insufficient indictment herein, was violative of his right under the Fifth and Sixth Amendments to the Constitution of the United States to be fully informed of the accusation against him and to be protected from being twice placed in jeopardy for the same offense.

That the case involves an interpretation of sections of the Internal Revenue Code and a question of general criminal law which should be determined by this Court.

WHEREFORE, petitioner prays that a writ of certiorari issue herein directed to the United States Circuit Court of Appeals for the Fifth Circuit, and that the judgment of said Court be reversed.

LEONARD L. LOCKARD,
Attorney for Petitioner.